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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

Flash90 LTD,

Plaintiff,

v.

DALLAS-FORT WORTH HOSPITAL
COUNCIL VENTURES, INC.,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Flash90 LTD ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against defendant DALLAS-FORT WORTH HOSPITAL COUNCIL VENTURES, INC. ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein creates photographic images and owns the rights to these photographs which Plaintiff licenses for various uses including online and print publications.
3. Defendant owns and operates a website known as gpl.com (the "*Website*").
4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's photographs on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Flash90 Ltd. is a photography company that maintains its principal place of business at 14 Hillel Street in Jerusalem, Israel.

6. Upon information and belief, Defendant DALLAS-FORT WORTH HOSPITAL COUNCIL VENTURES, INC., is a Texas corporation with a principal place of business at 300 Decker Drive, Irving in Dallas County, Texas and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over DALLAS-FORT WORTH HOSPITAL COUNCIL VENTURES, INC. because it maintains its principal place of business in Texas.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because DALLAS-FORT WORTH HOSPITAL COUNCIL VENTURES, INC. does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photography company by trade who is the legal and rightful owners of photographs which it licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

1 14. The Website is a popular and lucrative commercial enterprise.

2 15. On or about May 3, 2020, Plaintiff authored (via work-for-hire) a photograph of
3 a little girl in a classroom wearing a face mask (“Photograph 1”). A copy of Photograph 1 is
4 attached hereto collectively as Exhibit 1.

5 16. On July 20, 2020, Photograph 1 was registered by the USCO under Registration
6 No. VA 2-213-006.

7 17. On March 7, 2021, Plaintiff first observed Photograph 1 on the Website in a
8 story dated July 29, 2020. A copy of screengrab of the Website including Photograph 1 is
9 attached hereto collectively as Exhibit 2.

10 18. The Photograph was displayed at URL: [https://gp1.com/covid-19-school-](https://gp1.com/covid-19-school-reopening-jujitsu-for-employers/)
11 [reopening-jujitsu-for-employers/](https://gp1.com/covid-19-school-reopening-jujitsu-for-employers/).

12 19. The Photograph was stored at URL: [https://gp1.com/wp-](https://gp1.com/wp-content/uploads/2020/07/Back-to-school4-1.jpg)
13 [content/uploads/2020/07/Back-to-school4-1.jpg](https://gp1.com/wp-content/uploads/2020/07/Back-to-school4-1.jpg).

14 20. The Photograph was also stored at URL:
15 <https://twitter.com/GP1screening/status/1288541507989929986>.

16 21. Without permission or authorization from Plaintiff, Defendant volitionally
17 selected, copied, stored and displayed Plaintiff’s copyright protected photograph as set forth in
18 Exhibit “1” on the Website.

19 22. Upon information and belief, the Photograph was copied, stored and displayed
20 without license or permission, thereby infringing on Plaintiff’s copyrights (hereinafter
21 singularly the “*Infringement*” and collectively the “*Infringements*”).

22 23. Each Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed
23 tangible medium of expression that was sufficiently permanent or stable to permit it to be
24 communicated for a period of more than transitory duration and therefore constitutes a specific
25 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160
26 (9th Cir. 2007).

27 24. Each Infringement is an exact copy of the entirety of Plaintiff’s original image
28

1 that was directly copied and stored by Defendant on the Website.

2 25. Upon information and belief, Defendant takes an active and pervasive role in the
3 content posted on its Website, including, but not limited to copying, posting, selecting,
4 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

5 26. Upon information and belief, Defendant directly contributes to the content
6 posted on the Website by, inter alia, directly employing reporters, authors and editors as its
7 agents, including but not limited to Kaitlyn Ellis whose Defendant's Website lists her as an
8 author ("Employees").

9 27. Upon information and belief, at all material times the Employees were acting
10 within the course and scope of their employment when they posted the Infringements.

11 28. Upon information and belief, at all material times the Employees were acting
12 within the course and scope of their agency when they posted the Infringements.

13 29. Upon information and belief, the Photograph was willfully and volitionally
14 posted to the Website by Defendant.

15 30. Upon information and belief, Defendant was aware of facts or circumstances
16 from which the determination regarding the Infringement was apparent. Defendant cannot claim
17 that it was not aware of the infringing activities, including the specific Infringement which form
18 the basis of this complaint, since such a claim would amount to only willful blindness to the
19 Infringement on the part of Defendant.

20 31. Upon information and belief, Defendant engaged in the Infringements
21 knowingly and in violation of applicable United States Copyright Laws.

22 32. Upon information and belief, Defendant has the legal right and ability to control
23 and limit the infringing activities on its Website and exercised and/or had the right and ability
24 to exercise such right.

25 33. Upon information and belief, Defendant monitors the content on its Website.

26 34. Upon information and belief, Defendant has received a financial benefit directly
27 attributable to the Infringements.
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1 attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or,
2 in the alternative, at Plaintiff's election, an award for statutory damages against each Defendant
3 for each infringement pursuant to 17 U.S.C. § 504(c).

4 46. As a result of the Defendants' violations of Title 17 of the U.S. Code, the court
5 in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and
6 costs pursuant to 17 U.S.C. § 505 from Defendants.

7 47. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
8 entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17
9 U.S.C. § 502.

10 **JURY DEMAND**

11 48. Plaintiff hereby demands a trial of this action by jury.

12
13 **PRAYER FOR RELIEF**

14 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

15 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's
16 rights to the Photographs in violation of 17 U.S.C. §501 et seq. and award damages and
17 monetary relief as follows:

- 18 a. finding that Defendant infringed Plaintiff's copyright interest in the
19 Photograph by copying and displaying without a license or consent;
20 b. for an award of actual damages and disgorgement of all of Defendant's
21 profits attributable to the infringements as provided by 17 U.S.C. § 504
22 in an amount to be proven or, in the alternative, at Plaintiff's election, an
23 award for statutory damages against each Defendant for each
24 infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
25 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendants from
26 any infringing use of any of Plaintiff's works;
27 d. for costs of litigation and reasonable attorney's fees against Defendant
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pursuant to 17 U.S.C. § 505;

e. for pre-judgment interest as permitted by law; and

f. for any other relief the Court deems just and proper.

DATED: January 26, 2023

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